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IN THE  
**Supreme Court of the United States**

OCTOBER TERM 1944

Nos. 638 AND 639

HUNTMAN STABILIZER CORPORATION,

Petitioner,

*v.*

GENERAL MOTORS CORPORATION,

Respondent.

**REPLY BRIEF FOR PETITIONER**

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## INDEX

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	PAGE
Correction of Respondent's "Statement" .....	1
Argument .....	1
Scope of Patents 1,971,957 and 1,971,958 .....	1
Validity of Patents 1,971,959 and 1,971,960 .....	3
Violation of Rule 52(a) of the Federal Rules of Civil Procedure .....	5
Conclusion .....	5

### CASES CITED

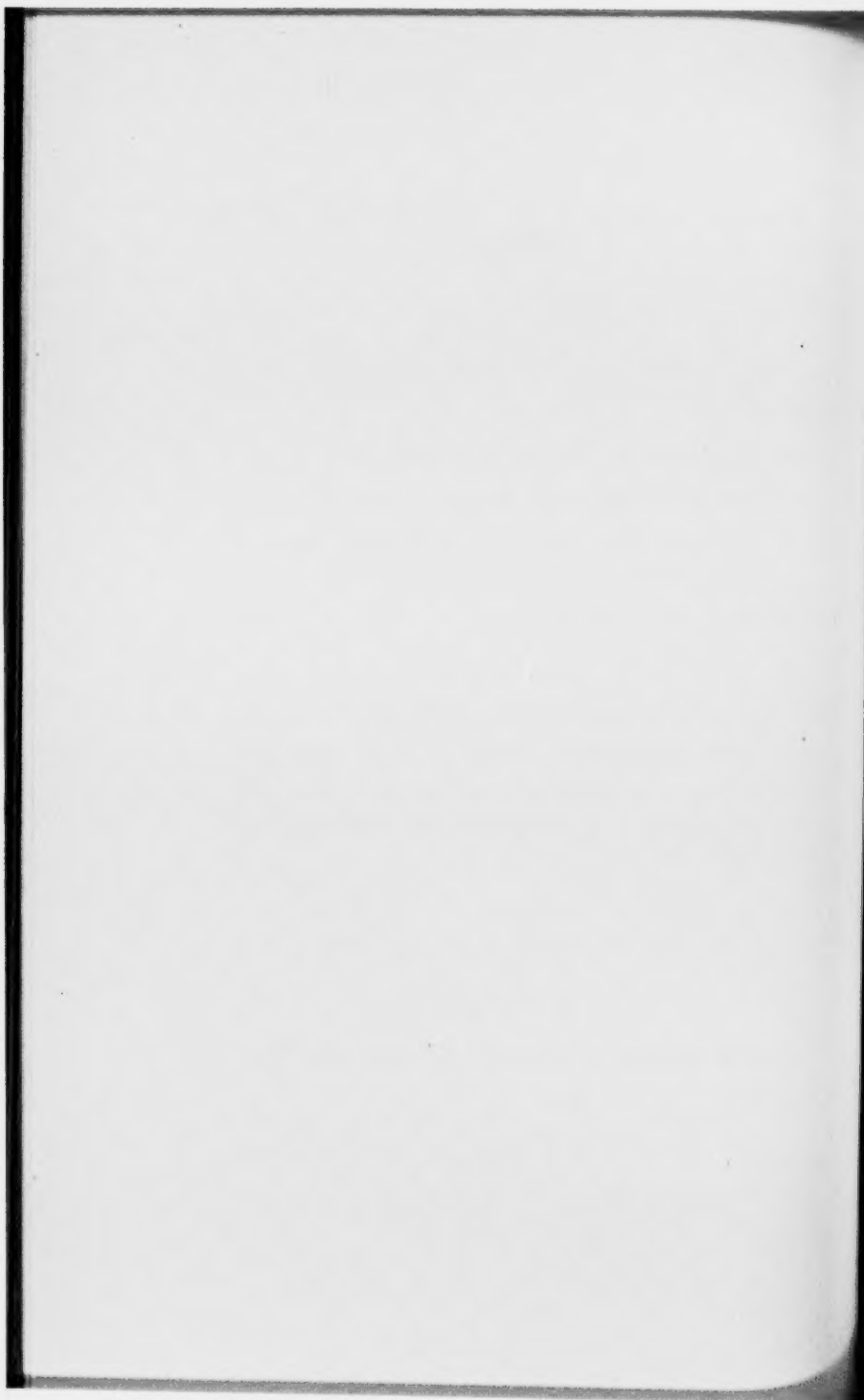
Pickering v. McCullough, 104 U. S. 310, 318 .....	3
United States v. Dubilier Condenser Corp., 289 U. S. 178, 188 .....	3
Carnegie Steel Co. v. Cambria Iron Co., 185 U. S. 403, 421, 422 .....	4

### STATUTE

Federal Rules of Civil Procedure Rule 52(a) .....	5
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### TEXT BOOK

Robinson on Patents, Vol. 1, pages 186, 187, Sec. 130 ..	4
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**REPLY BRIEF FOR PETITIONER**  
**Correction of Respondent's "Statement"**

By January 22, 1934, Petitioner knew the construction used in Respondent's cars at that time but the "Chevrolet" construction was not used until 1938 (Rec. 324, 325).

**ARGUMENT**

**Scope of Patents 1,971,957 and 1,971,958**

Respondent does not point out any error in the six points raised in Petitioner's brief but contends that the judgment is not based on these points *alone* and that they relate therefore to "moot" questions. This contention ignores the fact that these points are given in the Circuit

Court's opinion as grounds for its judgment and, unless corrected, would stand as precedents.

Respondent contends that the basis for the holding of non-infringement is the statement "Combining shock absorbers by means of a cross bar would we think have contributed nothing new to the art, neither in mechanism nor function." But this statement standing alone is not a sufficient or adequate ground for reversing the District Court's judgment. For it is not supported by any evidence nor is any basis in evidence given for it by the Circuit Court. There is no instance in the prior art of shock absorbers connected by a cross bar or other means. If there were, the Circuit Court could have pointed to it as an anticipation not only of the broad claims of patents 1,971,957 and 1,971,958, but also of patents 1,971,959 and 1,971,960 and need not have relied for this purpose on the later patent to Goyne.

In this statement the Circuit Court has, without any showing of error in the findings of the District Court, failed to give proper effect to the facts found by the District Court.

The statement is directly contradictory to the express findings of fact of the District Court that patents 1,971,957 and 1,971,958 are not limited to the particular cross tube connection illustrated in the patent; are not anticipated and are novel combinations (Findings 2 and 3, Rec. 284), that the mechanical connection between shock absorbers of the snubber type to accomplish the same results as those of patents 1,971,957 and 1,971,958, is not anticipated and is a novel invention (Finding 5, Rec. 285), and that the direct connection between recoil check shock absorbers on opposite sides of a vehicle by a practically incompressible fluid is functionally comparable to a physical connection thereof by a bar (Finding 6, Rec. 285).

Respondent's brief (p. 8) also contends that the Circuit Court found Petitioner's patents to be for "nothing but

aggregation''. There is no basis for this contention. The Circuit Court made no *finding* of aggregation. Its finding is just the contrary for it did not hold these patents invalid but limited to a hydraulic connection. If the combination of recoil check shock absorbers and hydraulic connections is not an aggregation, the same combination of shock absorbers and a cross bar connection could not be, for "in a patentable combination of old elements, all the constituents must so enter into it that each qualifies every other", *Pickering v. McCullough*, 104 U. S. 310, 318. If the hydraulic connections satisfy this requirement, and the Circuit Court's judgment assumes it does, then the cross bar connection satisfies it equally for they both function as connections. The evidence admittedly shows both connections to involve the same principle (Rec. 48) and the District Court so found (Finding 6, Rec. 285).

### **Validity of Patents 1,971,959 and 1,971,960**

One of the errors of the Circuit Court's judgment as to these patents is that they "cannot be sustained unless they are to be classed as further embodiments of patent 1,971,957". Respondent asserts that this statement demands an inference that is unwarranted by the opinion. But the court's language is clear. Though the mental concept is embodied or realized in a mechanism or a physical or chemical aggregate, the embodiment is not the invention and is not the subject of a patent. This distinction between the idea and its application in practice is the basis of the rule that employment merely to design or to construct or to devise methods of manufacture is not the same as employment to invent. *United States v. Dubilier Condenser Corp.*, 289 U. S. 178, 188. And "although an idea of means not yet reduced to practice is not an invention, still it is the idea, and not the practical embodiment, which constitutes the essence of the invention and to which the protection of the patent is awarded. If an idea is capable



of tangible expression under different forms, the difference in these forms is merely formal, not substantial; and the concrete inventions, however varied in appearance, or arrangement, or capacity, are nevertheless identical". Robinson on Patents, Vol. 1, pages 186, 187, Sec. 130.

Giving the word "embodiment" its usual and accepted meaning the statement pointed out by Petitioner as error needs no inference and is not changed by the further statement quoted by Respondent. These statements are in error as to law and are directly contrary to evidence conceded by Respondent (Rec. 48) and to the findings of fact of the District Court (Findings 4 and 6, Rec. 285).

The District Court's findings of fact were that patents 1,971,959 and 1,971,960 were novel inventions and were not anticipated (Findings 5 and 8, Rec. 285, 286). The Goyne patent was among the prior art before the District Court and is covered by these findings as is all of the other art. Goyne showed merely the idea of connecting two leaf springs. The conclusion of the Circuit Court is based purely upon a speculation that Goyne would anticipate if he had similarly connected two shock absorbers. To constitute an anticipation it is not enough that "there appears to be in the mechanism described [in the prior art] a possibility of its having been with some alterations adaptable to the process thereafter discovered", *Carnegie Steel Co. v. Cambria Iron Co.*, 185 U. S. 403, 421, 422. The holding of the Circuit Court of anticipation by the patent to Goyne is no stronger than the other grounds.

As to the holding of invalidity because these patents "were not applied for until after respondent had announced the appearance of the accused structure" (although within the two year statutory period), respondent contends that this is just an *added* ground of invalidity. But it does stand as a statement of law and a precedent for future decisions although it is without basis in the statutes or in any decision of this court.

Respondent argues that "If, in patent actions, the ultimate questions of validity and infringement are not open to review in the appellate court there would be little need for appeals". The true function of the Appellate Court is to review the judgment of the District Court to correct errors if any appear therein. If the findings and conclusions of the District Court may be merely ignored by the Circuit Court as was done in this case and the judgment of the District Court reversed without any showing of error therein there would be no need of a judgment of the District Court (Rule 52a Rules of Civil Procedure).

### **Violation of Rule 52(a) of the Federal Rules of Civil Procedure**

Respondent argues that the District Court's finding that "Huntman had in the Spring of 1923 experimented also with another form thereof consisting of a bar which was attached to the shock absorbers on the respective sides" was not a finding as to when Huntman *installed* a cross bar connection. But the District Court's finding that the cross bar was attached to the shock absorbers on the respective sides was a finding that it was installed in the Spring of 1923. Respondent does not point out what it considers should be done after the bar was attached to complete the installation.

Respondent is in error in stating that Huntman's testimony was uncorroborated. It was corroborated by the testimony of Hughes (Rec. 509-512) and Lepien (Rec. 513-521) and Exhibits P-22 to P-26 (Rec. 574-581).

### **Conclusion**

It is submitted that none of the erroneous conclusions of law advanced by the court below can be ignored as "moot" questions whether there be other conclusions also "moot" or not; that if these erroneous conclusions are to be dis-

missed as "moot" there is no other adequate basis for the judgments of the court below and that unless these erroneous conclusions are corrected by this court they will stand as precedents.

It is also submitted that the court below in ignoring the findings and conclusions of the District Court without pointing to any error has so far departed from the usual and accepted course of judicial procedure and from the "Rules of Civil Procedure" as to call for an exercise of this court's power of supervision.

Petitioner respectfully submits therefore that this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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